IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.32 of 1995

Decided on : November 16, 2006

Hima Devi **…..Appellant.**

VERSUS

Yoban Singh and others **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Anand Sharma, Advocate.

For the Respondents : Mr. Ashwani Sharma, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Appellant-plaintiff Hima Devi filed a suit for declaration that she had acquired title to 16 biswas area, comprised in Khasra No.2591/ 217, situate in Sub Tehsil Sainj, District Kullu, by adverse possession. She claimed that in the year 1976 she started constructing a house on a portion of the land and on the rest of the land she planted fruit plants.

3. Respondents-defendants, who are the recorded owners of the suit land, denied the plea of adverse possession and pleaded that in the year 1981, the plaintiff constructed house on a portion of the suit land, under the impression that the site was part of her own land bearing Khasra Nos. 211 and 212 and that they (defendants) too were under the impression that the site was a part of the property of the plaintiff, but lateron when demarcation was carried out in the year 1984-85, it came to light that the house stood

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Whether the reporters of the local papers may be allowed to see the Judgment?

on the suit land recorded in the ownership of the respondents-defendants. Thereafter, according to the respondents-defendants, a settlement took place between the appellant-plaintiff and the respondents-defendants and the former agreed to pay Rs.15,000/- on account of the price of the portion of the suit land that was covered under the house.

4. Trial Court decreed the suit and passed a decree declaring that the plaintiff had acquired title by prescription and was in possession of the entire suit land. Respondents-defendants were restrained from causing any interference in the possession of the appellant-plaintiff. Defendants felt aggrieved and went in appeal to the Court of District Judge. The District Judge accepted the appeal in part. The District Judge held that though the plaintiff was in possession of the suit land, the length of the period for which she had been in possession fell short of 12 years and had thus not ripened into title.

5. The plaintiff is aggrieved by the finding of the District Judge that her possession has not ripened into title. So, she has filed the present appeal.

6. The appeal was admitted on the following substantial questions of law:

1. Whether the learned Additional District Judge was correct in law in saying that before the person is in adverse possession, he had to know that he was holding the land of a third person in adverse possession?

2. Whether the learned Additional District Judge was not in error in holding that the fact of collection of material and starting of construction

in the year 1976 was not the origin of adverse possession?

3. Whether the learned Additional District Judge did not mis-read the evidence of the plaintiff in this respect that the construction had started somewhere in the year 1976?

7. There is overwhelming evidence suggesting that the appellant-plaintiff had not been in possession of the suit land for a minimum prescribed period of 12 years at the time when she filed the suit. No doubt, plaintiff's husband, acting as her attorney, in his deposition as PW-1 testified that the plaintiff started collecting material for construction of the house in 1976 and continued with the construction for 3-4 years and the construction was completed in the year 1980 but his testimony stands rebutted by the evidence led by the defendants. One of the defendants, namely Yoban Singh testified that the appellant-plaintiff started constructing the house in the year 1980 or 1981 and took only 2-3 months to complete it. Looking to the size of the area on which the house stands, i.e. about 400 square feet, it cannot be said that the plaintiff took 3-4 years time to complete the construction, particularly when, according to her attorney's testimony, it is made of local material. Besides the testimony of one of the defendants, namely Yoban Singh, there is testimony of an independent witness, namely Tape Ram DW-5, who stated that the construction of the house was started by the plaintiff in the year 1981 and it stood completed the same year. This part of the statement of DW-5 Tape Ram was not specifically subjected to cross-examination.

8. In view of the abovestated position, no fault can be found with the finding returned by the first Appellate Court that in the year 1990 when the suit was filed the possession of the appellant-plaintiff had not matured into title, because the total length of the period for which she had been in possession was less than 12 years. Consequently, all the three questions of law, on which the appeal was admitted, are answered against the appellant-plaintiff and the appeal is dismissed.

November 16, 2006(sd) **(Surjit Singh), J.**